

DETAILED ACTION

Claim Objections

1. Claim 15 is objected to because of the following informalities: The term, "filing", in line 1 appears to be inappropriate for the context of the claim. The examiner suggests, "filling", if correct. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, line 2, recites, "a restricted opening on one end" and "an opening on the distal end". It is unclear whether two openings are being claimed, with one opening on each end of the tube. The examiner suggests using the term, "proximal" to distinguish from "distal", if accurate. Further, in line 5, it is not clear which end of the tube connects to the means for filling and emptying. In Claim 12, "the grooves" lacks an antecedent basis, in that the examiner interprets "the grooves" to be grooves separate from the first mentioned "circumferential grooves". The examiner suggests amendment to clarify the meaning including a specific indication of the part, on which the circumferential grooves are disposed. The lack of clarity renders the scope of the claims indefinite.
4. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term

and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “distal end” in claim 17 is used by the claim to mean “the end which is in fluid communication with an elastomeric resilient hollow suction bulb”, while the accepted meaning is “proximal end.” The term is indefinite because the specification does not clearly redefine the term.

Claims 13 and 14 are rejected under 35 USC 112 4th paragraph, as being an improper dependent claim for failing to further limit the subject matter of the claim upon which it depends. Claims 13 and 14 incorporate the limitations of Claim 1 but no further structural limitations are present. As the Federal Circuit treats non-compliance with 35 USC 112 4th paragraph as a patentability issue, it is considered more appropriate to treat a claim that does not comply with 35 USC 112 4th paragraph by rejecting the claim under 35 USC 112 4th rather than by objecting to such claim under 37 CFR 1.75(c) as provided for in MPEP 608.01(n)(II). See *Pfizer Inc. v. Ranbaxy Labs., Ltd.*, 457 F.3d 1284, 1291-92 (Fed. Cir. 2006)

5.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6, 7, 9, 10, 11, 13, 14, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Caulfield, U.S. Patent No. 2,172,575. As to Claim 1, Caulfield teaches a leak

resistant fluid transfer device including an elongated hollow tube (14), having a restricted opening on one end and an opening on the distal end, see Figure 1. Further, Caulfield teaches means for filling and emptying the tube(1), fluidly connected to the open end of the tube, and a valve (3) positioned between the tube and the filling means, Col. 1, ln. 48-52 and Col. 2, ln. 41-46. The examiner is treating the means plus function language as invoking 35 U.S.C. § 112 6th paragraph limiting means for filling and emptying the tube as defining a resilient bulb, a piston device, and equivalents thereof. The examiner notes that the bulb (1) may be connected to the open end of the tube (14), see Figure 1, and that, when fluid is in the tube (14), the valve (3) will prevent the liquid from discharging, Col. 2, ln. 54 - Col. 3, ln. 4. The examiner notes that Claim 1 is being treated as best understood, in view of the rejection under 35 U.S.C. 112. As to Claim 2, Caulfield teaches a valve (3) removably attached, Col 2, ln. 30-38. As to Claim 5, Caulfield teaches a tube (14) having a shape allowing access to the bottom of a cooking pan, see Figure 1. As to Claim 6, Caulfield teaches an elastomeric bulb (1), as a means for filling and emptying, Col 2, ln. 50-54. As to Claim 7, Caulfield teaches an elastomeric bulb (1), as noted in the treatment of Claim 6 and the bulb (1) includes an opening, Col 1, ln. 47-49. The examiner notes that the opening may be used for venting fluids. As to Claim 9, Caulfield teaches means for removing the valve (3) from the device, Col. 2, ln. 30-34. As to Claim 10, Caulfield teaches an elastomeric bulb (1) having a weighted portion of its surface (8), see Figure 1. The examiner notes that the weighted portion would cause the device to rest on the weighted portion (8), when placed on its side. As to Claim 11, Caulfield teaches means for filling and emptying (1) having a shape, see Figure 1, which will fit a hand in ergonomic fashion, Col. 2, ln 44-45. As to Claims 13 and 14, the examiner notes that the device is capable of being used as a baster and as a drug

dispenser, in that a user may immerse the distal end in a fluid, draw a desired amount of fluid into the tube (14) and subsequently dispense the fluid, in measured quantity, as needed, Col. 2, ln. 41 - Col. 3, ln. 10. As to Claim 17, Caulfield teaches a device having an elongated hollow tube (14), having a tapered open head end, see Figures 1 and 3, and an open distal end, in fluid communication with an elastomeric resilient hollow suction bulb (1), defining a chamber, Col. 1, ln. 47-49 and Col. 2, ln. 41-46. Further, Caulfield teaches a valve (3) positioned between the tube and the bulb (1), Col. 1, ln. 48-52 and Col. 2, ln. 41-46. The bulb (1) includes a selectively closable opening and a vent passage (5), open to communication with the interior of the bulb (1), Col. 2, ln. 44 - Col. 3, ln. 5, and see Figure 1. The examiner notes that, when the vent (5) is open and the bulb (1) is compressed, air is expelled and when the vent (5) is closed, air is expelled from the tube (14). The examiner notes that Claim 17 is being treated as best understood, in view of the rejection under 35 U.S.C. 112.

Claim Rejections - 35 USC § 103

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 4, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caulfield in view of Porter, U.S. Patent No. 5,638,872. As to Claim 3, Caulfield shows the claimed limitations as discussed above, further, Caulfield teaches the practice of reversing the valve (3) for operation in opposing directions, Col. 3, ln. 43-49. Caulfield is silent as to the incorporation of two elastomeric valves. Porter teaches a baster (100) having two valves (120, 109), which operate in opposing directions, Col. 4, ln. 21-23 and 39-40. Alternatives for valve construction include elastomeric valves, Col. 4, ln. 25-27. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Caulfield with two elastomeric valves operating in opposing directions, as taught by Porter, to provide Caulfield with filling by fluid flow in one direction and fluid emptying by fluid flow in the opposite direction, to yield the predictable result of automatic control of air expulsion and fluid intake. The examiner notes that; although Porter teaches a valve (120) positioned on the bulb (104), Porter also teaches the practice of positioning two valves on the tube, Col. 3, ln. 25-26. As to Claim 4, Caulfield teaches a single valve (3), which operates in two directions, Col. 2, ln. 46 – Col. 3, ln. 5. Caulfield is silent as to incorporation of an elastomeric valve. Porter teaches elastomeric valves for use in a baster, Col. 4, ln. 25-27. The examiner finds that the same rationale, as set forth in the treatment of Claim 3, is applicable to render the incorporation of an elastomeric valve, in the device of Caulfield to be

obvious to one of ordinary skill in the art, at the time of the invention. As to Claim 15,

Caulfield teaches associated manually closable vent means (5), Col. 3, ln. 2-5 but is silent as to biasing the vent means in open position. Porter teaches a baster having manually closable vent means biased in open state, Col. 4, ln. 21-25 and Col. 6, ln. 43-58. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Caulfield with vent means biased in an open state, as taught by Porter, to provide Caulfield with mechanical closing means to yield the predictable result reliable vent closure. As to Claim 16, Caulfield is silent as to protruding means to facilitate closing the vent means. Porter teaches protruding means to facilitate closing vent means in means for filling and emptying a baster, Col. 6, ln. 43-58. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the known technique of protruding means, as taught by Porter, to provide Caulfield with a protruding element for closing vent means to yield the predictable result of facilitating the manual closure of the vent.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caulfield in view of Hutzler et al. U.S. Patent No. 5, 408,919. Caulfield does not teach means for filling and emptying being a reciprocating piston. Hutzler teaches a baster which employs a piston (10) for filling and emptying, Col 3, ln. 35-38. It would have been obvious to one of ordinary skill in the art, at the time of the invention to provide Caulfield with a piston, as taught by Hutzler, to provide Caulfield with known alternative means for filling and emptying, for a predictable result of performing the filling and emptying function without the need of a bulb.
11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caulfield in view of Mohrhauser et al. U.S. Patent No. 5,787,799. Caulfield is silent as to the presence of

cooperating grooves to increase the seal between the bulb (1) and the tube (14). Mohrhauser teaches a baster (10) having grooves (39, 40) that line up with grooves on the tube (12), see Figures 2 and 3. It would have been obvious to one of ordinary skill in the art, at the time of the invention to provide Caulfield with cooperating grooves, as taught by Mohrhauser, to provide Caulfield with enhanced sealing, as know in the art, to yield the predictable result of preventing leaking at the connections between elements of the device.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art references teach known configurations for basters. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN E. SIMMS JR whose telephone number is (571)270-7474. The examiner can normally be reached on M-F 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/JOHN E SIMMS JR/
Examiner, Art Unit 3711
17 August 2011
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